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8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 JONATHAN E. PARKS,

11 Plaintiff,

12 v.

13 RON HAYNES, et al.,

14 Defendants.

CASE NO. 3:17-cv-05884-BHS-DWC

ORDER DENYING APPOINTMENT  
OF COUNSEL

15  
16 Plaintiff Jonathan E. Parks, proceeding *pro se* and *in forma pauperis*, initiated this civil  
17 rights Complaint pursuant to 42 U.S.C. § 1983. Dkt. 1-1. Before the Court is Plaintiff's Motion  
18 for Appointment of Counsel ("Motion"). Dkt. 31. Defendants have filed a Response opposing  
19 Plaintiff's Motion. Dkt. 32.

20 No constitutional right to appointed counsel exists in a § 1983 action. *Storseth v.*  
21 *Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981); *see United States v. \$292,888.04 in U.S.*  
22 *Currency*, 54 F.3d 564, 569 (9th Cir. 1995) ("[a]ppointment of counsel under this section is  
23 discretionary, not mandatory"). However, in "exceptional circumstances," a district court may  
24 appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1) (formerly 28

1 U.S.C. § 1915(d)). *Rand v. Roland*, 113F.3d 1520, 1525 (9th Cir. 1997), *overruled on other*  
2 *grounds*, 154 F.3d 952 (9th Cir. 1998). To decide whether exceptional circumstances exist, the  
3 Court must evaluate both “the likelihood of success on the merits [and] the ability of the  
4 [plaintiff] to articulate his claims *pro se* in light of the complexity of the legal issues involved.”  
5 *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (quoting *Weygandt v. Look*, 718  
6 F.2d 952, 954 (9th Cir. 1983)). A plaintiff must plead facts showing he has an insufficient grasp  
7 of his case or the legal issues involved and an inadequate ability to articulate the factual basis of  
8 his claims. *Agyeman v. Corrections Corp. of America*, 390 F.3d 1101, 1103 (9th Cir. 2004).

9       Here, Plaintiff’s brief Motion requests appointed counsel because he cannot afford  
10 counsel, “[t]he issues involved in the case are complex and will require significant research and  
11 investigation,” and counsel would be better equipped than Plaintiff himself to handle the  
12 conflicting testimony likely to arise at trial. Dkt. 31. However, this does not amount to the  
13 exceptional circumstances required to appoint counsel. Plaintiff does not address the merits of  
14 his claims in his Motion. However, his Amended Complaint alleges Defendants violated his  
15 Eighth Amendment protections when they organized a bread recall that left Plaintiff without  
16 bread for several days. Dkt. 6. The merits of this claim are unclear because, without further  
17 evidence, the Court is not sure going without bread for several days rises to the level of a  
18 constitutional violation. Further, Plaintiff’s allegations that he received insufficient food is  
19 relatively straight forward. He has so far been able to articulate the legal and factual bases for his  
20 claims adequately for the Court. Thus, because the merits of his action are unclear, but he is  
21 otherwise able to adequately articulate his claims, Plaintiff has not shown the exceptional  
22 circumstances necessary for the Court to appoint counsel.

1 Therefore, Plaintiff's Motion (Dkt. 31) is denied without prejudice.

2 Dated this 26th day of June, 2018.

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4 David W. Christel  
5 United States Magistrate Judge  
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